IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

CRL.A.No. 394 of 1999()

CRA.278/1998 of V ADDL.SESSIONS COURT, ERNAKULAM DT.22.4.99
CC. 658/1996 OF JUDICIAL 1ST CLASS MAGISTRATE, KOLENCHERRY
.....

APPELLANT: COMPLAINANT

ALIYAS K. PATHROSE,
KANIYAMPADICKAL HOUSE,
VADAYAMPADY P.O.,
PUTHENCRUZE,
ERNAKULAM DISTRICT.

BY ADV. SRI.P.K.BEHANAN

RESPONDENTS: APPELLANT/ ACCUSED
----

1. **K.P.JOSEPH, PROPRIETOR, K.P.JOSEPH &**
   COMPANY STOCK & SHARE BROKERS,
   VEEYEM BUILDING, KOLENCHERRY.

2. **STATE OF KERALA**
   REP.BY THE PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.K.A.JALEEL
SRI.C.ANIL KUMAR
PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.394 of 1999

Dated this the 4th day of July, 2007

JUDGMENT

The appellant is the complainant in the proceedings initiated under Section 138 of the Negotiable Instruments Act which happened to be dismissed and the accused acquitted as per the order of the appellate court.

2. The appellate court relied on the earlier decision of this court that in case the account stands closed at the time of presentation of the cheque, the offence would not be attracted. The above view is no longer good law in view of the decisions of this court in Vathsan vs. Japahari (2003(3) KLT 972) and the decision of the Supreme Court in NEPC Micon Ltd. vs. Magna Leasing Ltd. (1999 (2) KLJ 59). It is only on the above ground that the appellate court has reversed the decision of the trial court and acquitted the accused. The rest of the findings are concurrent. The same are supported with proper reasons.

3. In the circumstances, the order reversing the decision of the trial court is herewith set aside. The accused is found

guilty of the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo imprisonment till the rising of the court and to pay a compensation of Rs.3,50,000/- to the complainant and in default, to undergo simple imprisonment for three months. The accused is granted three months' time from today onwards to remit the compensation amount. He shall appear before the JFCM, Kolencherry on 8.10.2007 to receive the sentence.

The appeal is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

csl